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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re J.J., a Person Coming Under the
Juvenile Court Law.

C047239

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

(Super. Ct. No.
JD216589)

Plaintiff and Respondent,

v.

L.J. et al.,

Defendants and Appellants.

L.J. and K.B. (appellants), the parents of J.J. (the minor), appeal from an order of the juvenile court terminating their parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)¹ Appellants contend the juvenile court erred in denying a petition for modification (§ 388) and abused its discretion by

¹ All further statutory references are to the Welfare and Institutions Code.

failing to apply the sibling relationship exception to adoption (§§ 366.26, subd. (c)(1)(E)). We disagree with both contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 21, 2001, the Sacramento County Department of Health and Human Services (DHHS) filed an original juvenile dependency petition pursuant to section 300 on behalf of the three-month-old minor. That petition, as amended, alleged that appellants had participated in various services and that the mother had failed to reunify with eight of the minor's siblings. The petition also alleged the mother had a substance abuse problem that rendered her incapable of providing adequate care for the minor, and that at birth the minor had tested positive for cocaine.

The juvenile court sustained the petition as amended and adjudged the minor a dependent child of the court. The court ordered DHHS to provide appellants with reunification services. The court also granted appellants weekly supervised visitation with the minor.

Reports by DHHS noted visits by appellants with the minor went well but that appellants had missed some scheduled visits. After appellants had missed three visits, their visitation services were cancelled. After visits resumed, appellants missed or were late to several more scheduled visits. Visits

between the minor and his three siblings went well.² According to the social worker, the minor's siblings were "very happy" to see the minor.

On February 11, 2003, the juvenile court terminated reunification services for appellants, who had failed to participate adequately in their reunification plans. The court also suspended appellants' and the siblings' contact with the minor. Thereafter, in June 2003, the court reinstated visitation.

In September 2003 DHHS placed the minor in a prospective adoptive home. The minor suffered from speech delays and asthma. Moreover, the minor's fine and gross motor skills appeared to be "slightly delayed."

The minor's visits with his siblings resumed, first on a twice-monthly, then monthly, basis. Those visits went well. According to DHHS, the minor did not appear to have any problem with the lack of contact with his siblings during the no-contact period. Moreover, the social worker did not believe the minor had "a significant relationship with the siblings that it would be detrimental to sever the parental rights."

On January 5, 2004, K.B. (the mother) filed a petition for modification, seeking the return of the minor to her custody. Alleging she had received various services, the mother argued that reunification would be in the minor's best interests

² Three of the minor's siblings had been placed with appellants under the supervision of DHHS.

because he could live with his siblings. The mother also noted the minor had not been in a foster/adoptive home for a significant period of time.

A May 2004 report by DHHS noted the minor had no separation problems regarding visitation with appellants and his siblings. According to the social worker, the minor was "strongly bonded" to his foster/adoptive family. Moreover, the minor had shown developmental improvements. The social worker did not believe it would be detrimental to sever contact between the minor and his siblings.

At an evidentiary hearing on the petition for modification, the mother testified she was drug free and was attending support group sessions. The mother was caring for the three children in her home. She also testified the minor appeared happy to visit with his siblings.

Counsel for the mother argued that the mother had shown changed circumstances and suggested the minor's best interests would be served if the minor were returned to parental custody. L.J. (the father) joined the mother's petition and also suggested that returning the minor to parental custody would promote the best interests of the minor. Appellants opposed the proposed termination of their parental rights.

At the conclusion of the June 28, 2004, hearing on the petition for modification and termination of parental rights, the juvenile court denied the petition for modification. The court found first that the mother had shown changed circumstances. However, the court did not believe returning the

minor to parental custody would serve the minor's best interests. In reaching that determination, the court stated in part that "[t]he second prong to be addressed on the 388 is the issue of whether a change at this time then, the proposed change at this time, promotes the best interests of the child Unfortunately, the Court cannot make such a finding. [The minor] is on the verge of permanence. He currently has stability. The Court cannot find a basis for interrupting that on the hope that he would be able to successfully be returned to and be maintained in the home of his mother. [¶] . . . [¶] On the issue of placement with the adult sibling, there has not been demonstrated a need to change the current placement for [the minor]. And what the Court is of the opinion of is that [the minor] requires consistency. He currently has consistency. He has issues. Fortunately, they're not as serious as they once were when he was first born and some of these earlier conditions have resolved themselves. But he still requires consistent steady care, and he has that now. And the Court is not going to deprive him of that. [¶] Therefore, I cannot find that the proposed modification states or promotes the best interests of the child even though there has been a significant change of circumstances"

The juvenile court determined that termination of parental rights would not be detrimental to the minor. As to the sibling relationship exception to adoption, the court stated in part as follows: "As to the sibling exception, [the minor] has not resided with his siblings and, of course, were it not for the

fact he was removed at an earlier stage, one could make a different finding in that regard. But he has not been raised with them. He does not have the type of relationship that is referred to in the case law. And while there indeed will be substantial interference with his sibling relationships, neither that nor the current relationship he has with his parents is such that it would outweigh the child's right to permanency."

The juvenile court found it likely the minor would be adopted and terminated the parental rights of appellants.

DISCUSSION

I

The mother contends the juvenile court abused its discretion in denying her petition for modification. In support of her claim, the mother notes she established changed circumstances, she is parenting three other children, the minor was in an adoptive placement for only a short period of time, and she saw the minor as regularly as possible. She also argues the minor would be served best by a return to parental custody. The father joins in the mother's argument.

Section 388, subdivision (a) provides that a parent of a dependent child may petition the juvenile court "upon grounds of change of circumstance or new evidence . . . for a hearing to change, modify, or set aside any order of court previously made" Section 388 permits modification of a dependency order if a change of circumstance or new evidence is shown and if the proposed modification is in the best interests of the

minor. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 (*Kimberly F.*)).

When a petition for modification is brought after the termination of reunification efforts, the best interests of the child are the paramount consideration. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this stage of the proceedings, the juvenile court looks to the child's needs for permanence and stability. (*Ibid.*)

The party petitioning for modification has the burden of proof by a preponderance of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.) A modification petition "is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

In denying the petition for modification, the juvenile court acknowledged that the mother had progressed in changing her circumstances by participating in various programs and parenting three children. However, the court also suggested the linchpin of the analysis was the minor's best interests. Noting the positive aspects of the minor's circumstances, the court determined the best interests of the minor would not be promoted by granting the modification petition.

The determination by the juvenile court was well within its discretion. As the record reflects, the mother has made substantial progress, and her efforts are to be commended. But

the record also suggests more time lay ahead for the mother during which she would continue to receive services. In the meantime, the minor would continue to develop and attach to adult figures, as the record showed he had been doing.

In her petition, the mother averred it was in the best interests of the minor to return him to parental custody because he would live with his siblings and because he had not been in an adoptive placement for a significant amount of time. The difficulty with the mother's declaration is her failure to allege pertinent facts in support of her belief that the *minor's* best interests require reunification. A *prima facie* showing requires the proffering of facts relevant to the claim made. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593 (*Edward H.*).) Mere beliefs, without facts to support them, do not constitute *prima facie* evidence of the minor's best interests.

Here, it is not enough to assert, as the mother does, that the minor should be returned to her merely because she is parenting his siblings. At the time of the hearing on the modification petition, the minor had been out of the mother's custody for a substantial period of time. In fact, he had never lived with the mother and father. Moreover, the minor's caregiver had expressed a willingness to adopt him. The mother's petition, therefore, is deficient because it contains few facts relating to the *minor's* circumstances.

The mother's brief emphasizes her efforts to maintain her relationship with the minor, her visits with the minor, and the fact she was parenting his siblings in support of her claim that

reunification with the minor was in the latter's best interests, but she says little about the minor's situation and feelings.

Most importantly, the mother did not allege any facts tending to prove the *minor's* needs for permanence and stability would be promoted by return to a parent who failed to demonstrate only months before that the services she received had resulted in changes in her behavior sufficient to permit the minor to reside with her safely.

In *Kimberly F.*, *supra*, 56 Cal.App.4th 519, the appellate court warned against the juvenile court's simply comparing the situation of the natural parent with that of a caretaker in determining a section 388 petition. It termed such an approach the "'simple best interest test.'" (*Id.* at p. 529.) Instead, the appellate court found that determining a child's best interests under section 388 required an evaluation of a number of factors, including the seriousness of the reason for the dependency action, the existing parent/child and caretaker/child bonds, and the nature of the changed circumstances.

(*Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 529-532.) The court suggested it was unlikely a parent who lost custody because of a drug problem, and failed to complete a reunification plan, would prevail on a section 388 petition, whereas in a "dirty house" case, which was present in *Kimberly F.*, the chances of success on the petition were greater. (*Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 531, fn. 9, 532.) In *Kimberly F.*, the court concluded the decision to deny the section 388 petition was based largely and improperly on the juvenile court judge's

adoption of the “‘narcissistic personality’ rationale,” which the judge had applied to the mother in that case. (*Id.* at pp. 526-527, 533.)

In this case, in denying the section 388 petition, the juvenile court did not discuss the factors analyzed in *Kimberly F.* However, evidence of all the critical factors contained in *Kimberly F.*, including the basis of the dependency action, the relationship between appellants and the minor, and the nature of the alleged changed circumstances, was before the court. Moreover, the court’s extensive comments about the case suggest it considered carefully all pertinent circumstances. On the record before it, the court concluded the mother failed to sustain her burden. Under the abuse of discretion standard, we see no error in that determination.

The record reflects that, although he had improved significantly, the minor had a great need for stability and consistency. Moreover, despite the mother’s efforts to maintain contact with the minor, and even considering the period when a no-contact order was in effect, the record also suggests the minor’s bond with appellants was not a strong one. The minor did not ask about them in between visits, displayed no behavior problems then, and referred to the prospective adoptive parents as “Mom” and “Dad.”

The juvenile court was required by statute (§ 388) to focus on the minor’s best interests in deciding whether to grant the petition for modification. As we have seen, those interests consist of the minor’s needs for stability and permanence.

(*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Childhood cannot wait for a parent to establish readiness for parenting. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) Here, the minor had shown the ability to bond with adult figures. On the other hand, the mother was still working on the problems that had contributed to the dependency proceedings. On this record, it is not surprising that the court ruled the minor should not be forced to wait any longer.

Under the circumstances of this case, the juvenile court did not act arbitrarily, capriciously, or beyond the bounds of reason in denying the mother's petition for modification. The court's conclusion that the minor's need for stability compelled denial of the petition and served the minor's best interests was reasonable and is supported by the record. (Cf. *Edward H.*, *supra*, 43 Cal.App.4th at p. 594.) In sum, appellants failed to make the necessary showing, as required by section 388, that a modification might promote the best interests of the minor. (Compare *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1416 with *In re Heather P.* (1989) 209 Cal.App.3d 886, 891.) There was no abuse of discretion or other error in the court's decision. (Cf. *In re Daijah T.* (2000) 83 Cal.App.4th 666, 673-675.)

II

The father claims the juvenile court abused its discretion when it refused to find that termination of parental rights would be detrimental to the minor because it would cause a substantial interference with the minor's relationships with his siblings. According to the father, the record reflects that the

minor and his siblings were bonded after visiting each other for two years, and that severance of those relationships would be detrimental to the minor. The father also argues the minor's long-term emotional needs outweighed the benefits of adoption. The mother joins in his claims.³

Appellants' claims are premised on a recently enacted statutory exception to adoption contained in section 366.26, subdivision (c)(1)(E) (hereafter subdivision (c)(1)(E)). Under that provision, effective January 1, 2002, the juvenile court may find a compelling reason for determining that termination of parental rights would be detrimental to the minor where "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (Stats. 2001, ch. 747, § 3.)

Pursuant to subdivision (c)(1)(E), the juvenile court is given the discretion to determine that termination of parental

³ Appellants have a sufficient legal interest to tender their claim. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 948-951 (*L. Y. L.*)).

rights would be detrimental under certain circumstances. To make such a determination, the court must find a "compelling reason." Moreover, the statute contains a number of criteria that the court may consider. But the court is not *required* by the statute to consider the applicability of the statutory exception. (Cf. *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.)

In this case, in considering the statutory exception, the juvenile court acknowledged that to terminate visitation would constitute a substantial interference with the minor's sibling relationships. But the court did not find a "compelling reason" under subdivision (c)(1)(E) to apply the exception. The reason is that, as the record suggests and the court found, the minor lacked a significant relationship with his siblings. He never lived with them and, for a time, did not visit them when they were in school. Moreover, there was evidence he did not miss them. On this record, the court concluded, not surprisingly, that the minor's need for permanency outweighed the benefits a continued relationship with his siblings would afford.

Here, the record suggests the benefits of adoption for the minor far outweigh the benefits of continuing sibling relationships. (*L. Y. L.*, *supra*, 101 Cal.App.4th at pp. 951-953.) Absent a significant relationship existing between the minor and his siblings, the record suggests that severance would not be detrimental to the minor. Accordingly, we reject appellants' claims.

DISPOSITION

The orders denying the petition for modification and terminating the parental rights of appellants are affirmed.

RAYE, Acting P.J.

We concur:

ROBIE, J.

CANTIL-SAKAUYE, J.